

From: Ann Pope
*Acting Executive Director,
Enforcement*

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Dear Sir/Madam,

CMA letter to newspaper publishers on competition law

In May 2015, the Competition and Markets Authority (CMA) found that an association of estate and lettings agents, three of its members and a newspaper publisher had broken competition law by agreeing to restrict the advertising of fees and discounts in a local newspaper. Each of the companies admitted that it had broken the law and they were collectively fined over £735,000.¹

The CMA is issuing this open letter to raise awareness amongst newspaper publishers that that this type of activity is illegal and that businesses may face significant fines if they engage in it.

What you need to know

Competition law exists to protect businesses and consumers from anti-competitive behaviour. Where businesses enter into agreements that restrict their ability to compete with each other, this can lead to artificially inflated prices, reduced innovation and limited consumer choice. Overall, reduced competition can lead to a lower quality of service.

Consumers drive competition where they are able to shop around through access to readily available and accurate information about the products or services they are seeking and the various offers available in the market. Therefore, the provision of clear and accurate information on prices, products and services plays an important role in driving competition between businesses as it encourages and empowers consumers to seek out the best offers available for a particular product or service, which in turn drives sellers to be more competitive.

¹ Further information on the investigation can be found on the CMA's [case page](#).

In this case, the members of the trade association agreed that they would not advertise fees or make any reference to their fees or discounts in a local newspaper, and certain members also agreed to prevent other agents from advertising or referring to their fees or discounts in that newspaper. Under pressure from certain agents, the newspaper agreed to reject any advertisements from agents that contained references to fees or discounts.

The CMA found that agreeing not to advertise estate or lettings agent fees or discounts, or to prevent other agents from advertising fees or discounts, can make it harder for property owners to assess which agents offer the best value for money or the best service. This can reduce price competition between competing agents and contribute to keeping estate and lettings agents' fees artificially high. In addition, it may make it harder for new estate or lettings agents to enter the market and compete effectively with established businesses.

The CMA would like to highlight some important points from this case of which newspaper publishers should be aware:

- **Newspapers should not agree restrictions on what a business can advertise, even if they are pressured to do so.** Each advertiser must be free to determine the contents of its own advertisement, as long as this complies with the newspaper publisher's own terms and conditions for the acceptance of advertisements. Entering into an agreement with third parties, or facilitating an agreement between third parties, which restricts another business' ability to compete and attract new customers, for example by advertising their fees or discounts, may break competition law. By participating in such anti-competitive agreements, newspapers can be held equally liable for breaking the law and can face significant financial penalties.
- **The consequences for breaching competition law can be severe.** Businesses that are found to have broken competition law can be fined up to 10% of their annual worldwide turnover, and company directors can be disqualified for up to 15 years where their conduct in relation to such a breach makes them unfit to be concerned in the management of a company. In addition, individuals involved in certain very serious offences, such as price-fixing, may be found guilty of the criminal cartel offence and could go to prison for up to five years and/or have to pay an unlimited fine.

How to find out more

The CMA is keen to work with those in the newspaper publishing industry to explain the implications of this case and ensure they understand what they need to do to comply with the law and can recognise where they may be at risk of breaking it. If you are approached at any time by a business, or group of businesses, that wishes

to negotiate restrictions on the content of advertisements, you should consider obtaining independent legal advice to make sure you are not in danger of breaking the law.

There is a range of guidance on the CMA's website to help businesses comply with the law, including a [case study](#). Having an effective compliance programme can help businesses identify if they are at risk of breaking the law and take steps to remedy the situation. The CMA has [published guidance](#) on effective compliance programmes.

If you believe that you or your business may have been involved in an anti-competitive agreement, then you can find information on how to report this on the [CMA's webpages](#), or by contacting us on 0203 738 6000. If you think you've been involved in a cartel, then you may even benefit from [lenient treatment](#) by coming forward to the CMA.

We hope that this letter helps you understand how competition law applies to your business and how to make sure you are competing fairly.

Yours faithfully,

Ann Pope
Acting Executive Director, Enforcement